



1 waived his appearance. (Tr. 31.) Medical expert Scott Mabee,  
2 Ph.D., and vocational expert Deborah LaPoint (VE) testified. (Tr.  
3 29.) The ALJ denied benefits on March 31, 2009, and the Appeals  
4 Council denied review. (Tr. 18-27, 7-9.) The instant matter is  
5 before this court pursuant to 42 U.S.C. § 405(g).

#### 6 STANDARD OF REVIEW

7 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the  
8 court set out the standard of review:

9 A district court's order upholding the Commissioner's  
10 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,  
11 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the  
12 Commissioner may be reversed only if it is not supported  
13 by substantial evidence or if it is based on legal error.  
14 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).  
15 Substantial evidence is defined as being more than a mere  
16 scintilla, but less than a preponderance. *Id.* at 1098.  
17 Put another way, substantial evidence is such relevant  
18 evidence as a reasonable mind might accept as adequate to  
19 support a conclusion. *Richardson v. Perales*, 402 U.S.  
20 389, 401 (1971). If the evidence is susceptible to more  
21 than one rational interpretation, the court may not  
22 substitute its judgment for that of the Commissioner.  
23 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*  
24 *Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

25 The ALJ is responsible for determining credibility,  
26 resolving conflicts in medical testimony, and resolving  
27 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th  
28 Cir. 1995). The ALJ's determinations of law are reviewed  
*de novo*, although deference is owed to a reasonable  
construction of the applicable statutes. *McNatt v. Apfel*,  
201 F.3d 1084, 1087 (9th Cir. 2000).

It is the role of the trier of fact, not this court, to resolve  
conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence  
supports more than one rational interpretation, the court may not  
substitute its judgment for that of the Commissioner. *Tackett*, 180  
F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).  
Nevertheless, a decision supported by substantial evidence will

1 still be set aside if the proper legal standards were not applied in  
 2 weighing the evidence and making the decision. *Browner v. Secretary*  
 3 *of Health and Human Services*, 839 F.2d 432, 433 (9<sup>th</sup> Cir. 1988). If  
 4 there is substantial evidence to support the administrative  
 5 findings, or if there is conflicting evidence that will support a  
 6 finding of either disability or non-disability, the finding of the  
 7 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-  
 8 1230 (9<sup>th</sup> Cir. 1987).

#### 9 SEQUENTIAL EVALUATION

10 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the  
 11 requirements necessary to establish disability:

12 Under the Social Security Act, individuals who are  
 13 "under a disability" are eligible to receive benefits. 42  
 14 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any  
 15 medically determinable physical or mental impairment"  
 16 which prevents one from engaging "in any substantial  
 17 gainful activity" and is expected to result in death or  
 18 last "for a continuous period of not less than 12 months."  
 19 42 U.S.C. § 423(d)(1)(A). Such an impairment must result  
 20 from "anatomical, physiological, or psychological  
 21 abnormalities which are demonstrable by medically  
 22 acceptable clinical and laboratory diagnostic techniques."  
 23 42 U.S.C. § 423(d)(3). The Act also provides that a  
 24 claimant will be eligible for benefits only if his  
 25 impairments "are of such severity that he is not only  
 26 unable to do his previous work but cannot, considering his  
 27 age, education and work experience, engage in any other  
 28 kind of substantial gainful work which exists in the  
 national economy. . . ." 42 U.S.C. § 423(d)(2)(A). Thus,  
 the definition of disability consists of both medical and  
 vocational components.

In evaluating whether a claimant suffers from a  
 disability, an ALJ must apply a five-step sequential  
 inquiry addressing both components of the definition,  
 until a question is answered affirmatively or negatively  
 in such a way that an ultimate determination can be made.  
 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The  
 claimant bears the burden of proving that [s]he is  
 disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.  
 1999). This requires the presentation of "complete and  
 detailed objective medical reports of h[is] condition from  
 licensed medical professionals." *Id.* (citing 20 C.F.R. §§

1 404.1512(a)-(b), 404.1513(d)).

2 The Commissioner has established a five-step sequential  
3 evaluation process for determining whether a person is disabled. 20  
4 C.F.R. §§ 404.1520(a), 416.920(a); see *Bowen v. Yuckert*, 482 U.S.  
5 137, 140-42 (1987). In steps one through four, the burden of proof  
6 rests upon the claimant to establish a prima facie case of  
7 entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d  
8 920, 921 (9<sup>th</sup> Cir. 1971). This burden is met once a claimant  
9 establishes that a physical or mental impairment prevents her from  
10 engaging in her previous occupation. 20 C.F.R. §§ 404.1520(a),  
11 416.920(a). At step five, the burden shifts to the Commissioner to  
12 show that (1) the claimant can perform other substantial gainful  
13 activity; and (2) a "significant number of jobs exist in the  
14 national economy" which claimant can perform. 20 C.F.R. §§  
15 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496,  
16 1498 (9<sup>th</sup> Cir. 1984).

17 **STATEMENT OF THE CASE**

18 The facts of the case are set forth in detail in the transcript  
19 of proceedings and briefly summarized here. Plaintiff did not  
20 attend the hearing, at which Plaintiff's representative waived  
21 Plaintiff's appearance and proceeded with the hearing. (Tr. 31.)  
22 The record shows Plaintiff was 46 years old at the time of the  
23 hearing, had completed 11<sup>th</sup> grade and obtained a high school  
24 equivalency degree. He also had attended some college courses. (Tr.  
25 41, 317.) During mental health evaluations, Plaintiff reported a  
26 significant history of drug and alcohol abuse between 1988 and 2006,  
27 including cocaine and methamphetamine. (Tr. 284, 317.) He also

1 reported past psychiatric hospitalizations, the most recent in 2005,  
2 at Kootenai Medical Center and Idaho State Hospital. (Tr. 316.) In  
3 his application, Plaintiff reported past work experience as a cook,  
4 janitor, and landscape worker. (Tr. 114.) Plaintiff alleges his  
5 mental disorders render him unemployable.

6 **ADMINISTRATIVE DECISION**

7 Regarding Plaintiff's application for DIB, ALJ Gaughen found,  
8 "the claimant's representative amended the alleged onset date from  
9 May 1, 1998, to the date of application, February 15, 2007. Because  
10 the claimant's date of last insured for Title II [DIB] benefits is  
11 March 31, 1999, his application for said benefits is moot." (Tr.  
12 18.) This finding is not contested. Therefore, Plaintiff's SSI  
13 application is the only claim before the court on review.

14 At step one, the ALJ found Plaintiff had not engaged in  
15 substantial gainful activity since February 15, 2007, the amended  
16 alleged onset date. (Tr. 20.) At step two, he found Plaintiff had  
17 severe impairments of schizoaffective disorder, antisocial  
18 personality disorder and polysubstance abuse in remission. (*Id.*) He  
19 also determined alleged back pain was a non-severe impairment. (Tr.  
20 21.) At step three, he found Plaintiff's impairments, alone and in  
21 combination, did not meet or medically equal one of the listed  
22 impairments in 20 C.F.R., Appendix 1, Subpart P, Regulations No. 4  
23 (Listings), Sections 12.04, 12.08 or 12.09. (*Id.*) The ALJ found  
24 Plaintiff's allegations of disabling symptoms and limitations lacked  
25 credibility. (Tr. 25-26.) At step four, he determined Plaintiff  
26 had the residual functional capacity to perform medium level work  
27 with numerous non-exertional limitations caused by mental  
28

1 impairments. (Tr. 23.) However, based on the case record and VE  
2 testimony, he determined Plaintiff's mental impairments did not  
3 preclude performance of his past relevant work as a janitor;  
4 therefore, Plaintiff was not found disabled as defined by the Social  
5 Security Act. (Tr. 23-27.)

#### 6 ISSUES

7 The question is whether the ALJ's decision is supported by  
8 substantial evidence and free of legal error. Plaintiff argues the  
9 ALJ erred when he: (1) rejected the opinions of examining  
10 psychologist Kayleen Islam-Zwart, Ph.D., and mental health provider  
11 Laura Calkins, B.S.W.; (2) improperly relied on non-examining  
12 medical source opinions; (3) presented an incomplete hypothetical to  
13 the VE; and (4) failed to include all limitations supported by the  
14 evidence in the final RFC. (Ct. Rec. 14 at 7-13.)

#### 15 DISCUSSION

##### 16 A. Evaluation of Acceptable Medical Source Opinions

17 During disability proceedings, the ALJ evaluates medical  
18 evidence submitted and must explain the weight given to probative  
19 opinions of accepted medical sources in the record. *See Vincent v.*  
20 *Heckler*, 739 F.2d 1393, 1394-95 (9<sup>th</sup> Cir. 1984). Acceptable medical  
21 sources include licensed physicians and psychologists. The  
22 Regulations distinguish among the opinions of three types of  
23 accepted medical sources: (1) sources who have treated the claimant;  
24 (2) sources who have examined the claimant; and (3) sources who have  
25 neither examined nor treated the claimant, but express their opinion  
26 based upon a review of the claimant's medical records. 20 C.F.R. §§  
27 404.1527, 416.927. A treating physician's opinion carries more  
28

1 weight than an examining physician's, and an examining physician's  
2 opinion carries more weight than a non-examining reviewing or  
3 consulting physician's opinion. *Benecke v. Barnhart*, 379 F.3d 587,  
4 592 (9<sup>th</sup> Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir.  
5 1995). The Commissioner must provide "clear and convincing" reasons  
6 for rejecting the uncontradicted opinion of a treating or examining  
7 physician. *Lester*, 81 F.3d at 830. If the medical opinion is  
8 contradicted, it can only be rejected for "specific" and  
9 "legitimate" reasons that are supported by substantial evidence in  
10 the record. *Andrews*, 53 F.3d at 1043.

11 State agency psychological consultants are experts in the  
12 evaluation of medical issues in disability claims. Their findings  
13 are treated as expert opinion evidence of non-examining sources by  
14 the ALJ. *Social Security Ruling (SSR)* 96-6p. The opinion of a non-  
15 examining medical expert or state agency consultant by itself cannot  
16 be considered substantial evidence that supports the rejection of a  
17 treating or examining physician. *Lester*, 81 F.3d at 831. Medical  
18 experts may testify at the administrative hearing to assist the ALJ  
19 in his evaluation of the medical evidence. *Andrews*, 53 F.3d at  
20 1041. Testimony of a medical expert may serve as substantial  
21 evidence when supported by and consistent with other evidence in the  
22 record. *Id.*

23 Nurse practitioners and mental health therapists acting  
24 independently are not "acceptable medical sources" under the  
25 Regulations; however, as "other sources," their opinions as to the  
26 effects of impairments on a claimant's ability to work must be  
27 considered and the weight given explained. 20 C.F.R. §§ 404.1513(d);  
28

1 416.913(d); SSR 06-03p.

2 Historically, the courts have recognized conflicting medical  
3 evidence, the absence of regular medical treatment during the  
4 alleged period of disability, and the lack of medical support for  
5 doctors' reports based substantially on a claimant's subjective  
6 complaints of pain as specific, legitimate reasons for disregarding  
7 a treating or examining physician's opinion. *Flaten v. Secretary of*  
8 *Health and Human Servs.*, 44 F.3d 1453, 1463-64 (9<sup>th</sup> Cir. 1995); *Fair*  
9 *v. Bowen*, 885 F.2d 597, 604 (9<sup>th</sup> Cir. 1989). Credibility is a factor  
10 legitimately weighed in the evaluation of medical opinions. See  
11 *Webb v. Barnhart*, 433 F.3d 683, 688 (9<sup>th</sup> Cir. 2005).

12 Here, Plaintiff presented documentation of a long history of  
13 mental illness, including several psychiatric hospitalizations. The  
14 ALJ summarized the medical evidence, including medical expert  
15 testimony from Dr. Mabee. (Tr. 21-23, 24-26.) Assigning great  
16 weight to Dr. Mabee's interpretation of the case record, which did  
17 not include Dr. Islam-Zwart's 2008 evaluation, the ALJ concluded  
18 Plaintiff had mental impairments that were severe, but these would  
19 not prevent him from doing his past work. (Tr. 27.) In doing so,  
20 he specifically rejected Dr. Islam-Zwart's opinions that Plaintiff  
21 exhibited severe psychiatric symptoms and was not able to work now  
22 and probably not in the future, even though he was being treated  
23 with psychotropic medication and psychotherapy. (Tr. 406.)

24 Dr. Islam-Zwart's opinions were contradicted by several  
25 acceptable medical sources in the record. For example, Dr. Bailey's  
26 May 2007 evaluation, which consisted of an interview and objective  
27 psychological testing, did not indicate Plaintiff was totally  
28 disabled. Further, test results showed affirmative evidence of



1 malingering. (Tr. 318). Dr. Bailey opined Plaintiff reported  
2 mostly independent activities of daily living, demonstrated adequate  
3 social functioning, tested at a high average range of intelligence,  
4 and was capable of multi-step tasks. Dr. Bailey noted Plaintiff's  
5 antisocial behaviors were likely caused by substance abuse. He also  
6 observed it was difficult to evaluate Plaintiff's actual  
7 concentration and persistence capabilities, and recommended  
8 obtaining additional evidence in this area. (Tr. 319.) In his  
9 evaluation, Dr. Bailey noted Plaintiff's disability conviction, and  
10 records from prior psychiatric hospitalizations which referenced  
11 invalid psychological test results indicating "significant  
12 embellishment of pathology." (Tr. 192, 316.) The ALJ gave more  
13 weight to Dr. Bailey's assessment than to Dr. Islam-Zwart's because  
14 of "its consistency with the remaining evidence" in the record.  
15 (Tr. 26.)

16 Plaintiff contends the reasons given for rejecting Dr. Islam-  
17 Zwart's opinion he could not work are not legally sufficient because  
18 they are supported only by the medical opinions of non-examining  
19 medical sources Dr. Jerry Gardner and Dr. Mabee. This argument is  
20 not persuasive. The ALJ gave specific and legitimate reasons for  
21 rejecting Dr. Islam Zwart's conclusion that Plaintiff was unable to  
22 work. (Tr. 26.) He found Plaintiff's self-report of severe  
23 symptoms relied upon by Dr. Islam-Zwart was not reliable; this is  
24 supported by affirmative evidence of malingering throughout the  
25 record.<sup>1</sup> (Tr. 26.) Once a claimant's self-report is found

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26  
27 <sup>1</sup> The ALJ's credibility findings are not challenged. The ALJ  
28 referenced objective evidence of malingering and symptom

1 unreliable, the ALJ may legitimately discount a medical source  
2 opinion of disability based largely on the claimant's description of  
3 his symptoms. *Andrews*, 53 F.3d at 1043. The ALJ also found the  
4 medical evidence from other providers (1) indicated Plaintiff's  
5 symptoms were controlled adequately with medication when he was  
6 compliant, and (2) did not reflect a diagnosis of major depressive  
7 disorder of the severe panic attacks reported by Dr. Islam-Zwart.  
8 (Tr. 26, 243, 318-19, 348, 406.) Finally, the ALJ found Dr. Islam-  
9 Zwart's observation that Plaintiff "exhibited mental control within  
10 normal limits" and her disregard of his extensive history of  
11 substance abuse in her evaluation were reasons to give less weight  
12 to her opinions than those of other medical sources (examining and  
13 non-examining) whose opinions were consistent with the evidence in  
14 its entirety. (Tr. 26.) These are specific legitimate reasons to  
15 discount an examining psychologist's opinion. *Andrews*, 53 F.3d at  
16 1043. The ALJ's rejection of Dr. Islam-Zwart's opinion that  
17 Plaintiff could not work due to mental impairments is legally  
18 sufficient and supported by substantial evidence.

19 Further, the ALJ's reliance on Dr. Gardner's report and Dr.  
20 Mabee's testimony is not error. The fact that these experts are  
21 non-examining medical sources does mean their opinions deserve  
22 little weight. *Lester*, 81 F.3d at 831. As held by the Ninth  
23 Circuit, opinions from non-examining medical advisors "may serve as

24 \_\_\_\_\_  
25 embellishment; the Commissioner's credibility determination is  
26 supported by legally sufficient reasons and substantial evidence.  
27 The ALJ did not err in discounting opinions based on Plaintiff's  
28 unreliable self-report. *Flaten*, 44 F.3d at 1464.

1 substantial evidence when they are supported by other evidence in  
2 the record and consistent with it." *Andrews*, 53 F.3d at 1041. Both  
3 Dr. Gardner and Dr. Mabee reviewed the case record, including  
4 reports written before the alleged onset date, and noted evidence of  
5 malingering, substance abuse (that was noted to be contributing  
6 factor to his psychoses), the effectiveness of medication in  
7 decreasing psychotic symptoms, and inconsistencies between  
8 Plaintiff's presentation and reported symptoms. (Tr. 37-38, 266,  
9 357, 422, 425.) The records show their opinions are supported by  
10 medical evidence from 2005 to the date of the hearing, including  
11 opinions from other acceptable medical sources, *e.g.*, Drs. Arrienda,  
12 Wait, Gentile, Vandriver, Creel. (Tr. 20-22.) The ALJ did not err  
13 in his reliance in part on Dr. Mabee's interpretation of the medical  
14 records and Dr. Gardner's mental RFC assessment based on a review of  
15 the record in 2007. Because the ALJ gave specific, legitimate  
16 reasons for the weight given probative medical opinions, and  
17 substantial evidence reasonably supports his evaluation, his  
18 resolution of conflicts in the medical evidence is affirmed.

19 **B. Other Source Opinions**

20 Treatment notes from Spokane Mental Health show Ms. Calkins  
21 provided counseling services for Plaintiff between October 2006 and  
22 March 2007. (Tr. 286-301.) In March 2007, Ms. Calkins wrote a one  
23 paragraph letter, "To whom it may concern," in which she opined  
24 Plaintiff was unable to perform work-related activities on a short  
25 term or long term basis. (Tr. 285.) As a mental health therapist,  
26 Ms. Calkin's opinions are considered "other source" opinions which  
27 generally are given less weight than those of an acceptable medical  
28

1 source. Nonetheless, the ALJ is obliged to consider other source  
2 opinions as to how Plaintiff's impairments affect his functional  
3 abilities. If the ALJ rejects the opinions, his reasoning must be  
4 specific and "germane" to the other source. *Nguyen v. Chater*, 100  
5 F.3d 1462, 1467 (9<sup>th</sup> Cir. 1996) (citing *Dodrill v. Shalala*, 12 F.3d  
6 915, 919 (9th Cir. 1993)).

7 In *Social Security Ruling* 06-03p, the Commissioner advises  
8 adjudicators that "[e]ach case must be adjudicated on its own merits  
9 based on a consideration of the probative value of the opinions and  
10 a weighing of all the evidence in that particular case." *Id.* Among  
11 the factors considered in assigning weight or rejecting other source  
12 opinions are: the treatment relationship, including length, nature  
13 and frequency of contact; how well the source explains an opinion  
14 and presents evidence to support of the opinion; how consistent the  
15 opinion is with medical evidence; and whether the source has a  
16 specialty or expertise. *Id.*

17 In his discussion of the evidence and Plaintiff's RFC, the ALJ  
18 noted Ms. Calkins' opinion "that claimant is not capable of work  
19 because of his symptoms." (Tr. 26.) He gave this opinion little  
20 weight because (1) it was not supported by medical evidence in the  
21 record, and (2) under the Regulations, her opinions as a social  
22 worker are assigned less weight than acceptable medical source  
23 opinions. (Tr. 26.) Although the ALJ did not reject specific  
24 findings by Ms. Calkins, as discussed *infra*, he did not err in  
25 discounting her opinion.

26 As is the case with acceptable medical source opinions, the ALJ  
27 is not obliged to accept opinions that are conclusory, unexplained,  
28 and unsupported by clinical findings. See *Thomas v. Barnhart*, 278

1 F.3d 947, 957 (9<sup>th</sup> Cir. 2002). Here, Ms. Calkins' only professional  
2 opinion was that Plaintiff "was unable to perform any work-related  
3 activities on a short term, or long term basis." (Tr. 285.)  
4 However, she did not explain what specific symptoms or limitations  
5 she observed or opine on how they would limit Plaintiff's work  
6 related functioning. (Tr. 285.) Because she did not offer findings  
7 on how specific, observed limitations affected Plaintiff, there were  
8 no specific findings for the ALJ to reject. Further, independent  
9 review shows Ms. Calkins sparse progress notes, which could have  
10 supported her opinions if there had been inferences to be drawn,  
11 consist of Plaintiff's subjective complaints, which the ALJ found  
12 not credible. Opinions based on a claimant's unreliable self-report  
13 are properly rejected by the adjudicator. See *Tonapetyan v. Halter*,  
14 242 F.3d 1144, 1149 (9<sup>th</sup> Cir. 2001). Finally, the determination of  
15 disability is reserved solely to the Commissioner; even if Ms.  
16 Calkins' letter were improperly rejected, the error is harmless  
17 because her "other source" opinion that Plaintiff cannot work due to  
18 mental limitations is not conclusive evidence of disability. SSR  
19 06-03p. The ALJ properly considered Ms. Calkins' testimony and did  
20 not err in giving it little weight.

21 **C. Step Four: RFC and VE testimony**

22 Plaintiff argues the ALJ failed to include all of his  
23 limitations in the final RFC determination. Specifically, he  
24 contends the ALJ did not include limitations identified by Dr.  
25 Gardner, whose opinion the ALJ relied upon in rejecting functional  
26 limitations assessed by Dr. Islam-Zwart. (Ct. Rec. 14 at 13; Tr.  
27 26-27.) However, the Commissioner's final RFC determination is not  
28 a "medical issue" under the Regulations; it is an administrative

1 finding based on all relevant evidence in the record, not just  
2 medical evidence. 20 C.F.R. § 416.945. The RFC determination  
3 represents the most a claimant can still do despite his physical and  
4 mental limitations. *Id.* The final determination regarding a  
5 claimant's ability to perform basic work is the sole responsibility  
6 of the Commissioner. 20 C.F.R. § 416.946; SSR 96-5p. No special  
7 significance is to be given to a medical source opinion on issues  
8 reserved to the Commissioner. 20 C.F.R. § 416.927(e).

9 In explaining the weight given medical evidence, an ALJ is not  
10 required to recite specific words in rejecting medical opinions.  
11 *Magallanes v. Bowen*, 881 F.2d 747, 755 (9<sup>th</sup> Cir. 1989). On review,  
12 the court can read the adjudicator's summary of the evidence and  
13 findings and draw legitimate inferences from the adjudicator's  
14 decision relevant to the medical source's opinion. *Id.* Here,  
15 Plaintiff fails to specify which unrejected limitations were  
16 excluded from the RFC determination and how their inclusion would  
17 change the outcome of these proceedings. Generally, this lack of  
18 specificity will preclude review by the court. *See Carmickle v.*  
19 *Commissioner of Social Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9<sup>th</sup> Cir.  
20 2008). Nonetheless, in this case, inferences legitimately can be  
21 drawn that the ALJ incorporated the majority of Dr. Gardner's RFC  
22 and narrative limitations into the final RFC determination. (Tr.  
23 340-57.)

24 For example, the ALJ found limitations in social interaction  
25 and collaborative work; restrictions in work environments, *i.e.*,  
26 predictable work routine, drug and alcohol-free; limits on executive  
27 judgment and function; and mild limitations due to personality  
28 issues. (Tr. 23, 340-42.) These limitations are consistent with

1 functional limitations noted by the examining and non-examining  
2 medical sources and evaluated by the ALJ and discussed above. The  
3 ALJ's final RFC determination represents a reasonable interpretation  
4 of the entire medical record and Plaintiff's credible statements.

5 It is also noted on review that the hypothetical presented to  
6 the VE at step four reflects substantially all of the functional  
7 limitations and personality issues included in the final RFC  
8 determination: medium level work;<sup>2</sup> higher than average intelligence;  
9 ability to follow simple, detailed instructions; mild limitations  
10 due to personality issues; limitations on sophisticated social  
11 interaction or collaborative work; perfunctory interactions with the  
12 public and co-workers; need for an alcohol/drug free environment and  
13 routine work environment; and limitations in making complex  
14 judgments or executive type functions. (Tr. 41-42.) Therefore, the  
15 VE's testimony that the hypothetical individual could perform work  
16 as a janitor is substantial evidence that amply supports the ALJ's  
17 finding that Plaintiff could perform his past work. *Bayliss v.*  
18 *Barnhart*, 427 F.3d 1211, 1217-18 (9<sup>th</sup> Cir. 2005). Because the  
19 evidence reasonably supports the ALJ's reasoning and findings, the  
20 court may not second-guess the Commissioner's determination.  
21 *Tackett*, 180 F.3d at 1097. Accordingly,

22 **IT IS ORDERED:**

23 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 13**) is

24 \_\_\_\_\_  
25 <sup>2</sup> The ALJ properly considered non-severe back problems  
26 mentioned in the medical records and reduced Plaintiff's physical  
27 RFC to medium level in the hypothetical individual and the RFC  
28 determination. (Tr. 21, 23, 42-42.)

1 **DENIED;**

2 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 16**) is  
3 **GRANTED;**

4 The District Court Executive is directed to file this Order and  
5 provide a copy to counsel for Plaintiff and Defendant. Judgment  
6 shall be entered for Defendant, and the file shall be **CLOSED**.

7 DATED September 14, 2010.

8  
9 S/ CYNTHIA IMBROGNO  
UNITED STATES MAGISTRATE JUDGE